



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF F-M-A-H-

DATE: DEC. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. APPLICABLE LAW**

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent parts:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse]. . . .

\* \* \*

(ii) *Legal status of marriage.* . . . [t]he self-petitioner's remarriage . . . will be a basis for the denial of a pending self-petition.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Egypt, last entered the United States on February 4, 2001, as a nonimmigrant visitor. On [REDACTED], 2001, he married his second spouse, J-G-<sup>1</sup>, a U.S. citizen, in New York. They later divorced on [REDACTED], 2005. The Petitioner thereafter married his third spouse, N-U-<sup>2</sup>, on [REDACTED], 2012.

The Petitioner filed the instant Form I-360 on November 17, 2008 based on his marriage to J-G-. The Director subsequently issued a Request for Evidence (RFE) of, among other things, the Petitioner's good faith intentions in marrying his spouse and his good moral character. The Petitioner responded to the RFE with additional evidence. The Director found the evidence of record insufficient to establish the Petitioner's eligibility. The Director denied the petition on the basis that the Petitioner had not established a qualifying relationship with his former U.S. citizen spouse. The Petitioner timely appealed. On appeal, the Petitioner submits a brief statement.

## III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. Beyond the determination of the Director, the instant petition is also not approvable because the Petitioner did not establish his eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act.<sup>3</sup> The appeal will be dismissed for the following reasons.

<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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A. Qualifying Relationship

We find no error in the Director's determination that the Petitioner had not established a qualifying spousal relationship to a U.S. citizen because his marriage to his former U.S. citizen spouse was terminated more than two years before the filing of the Form I-360. The Act allows a divorced petitioner to still establish the requisite qualifying spousal relationship if his or her Form I-360 is filed within two years of the divorce and he or she demonstrates a connection between the legal termination of the marriage within the two years and the battery or extreme cruelty by the U.S. citizen spouse. *See* Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Here, the Petitioner and his former spouse, J-G-, were divorced in [REDACTED] 2005, and the Petitioner did not file the Form I-360 based on his former marriage until November 2008, well over three years after the divorce. The Petitioner therefore has not established that the instant petition was filed within two years of the termination of his marriage to establish a qualifying spousal relationship. Further, the record shows that the Petitioner married his third spouse, N-U-, on [REDACTED] 2012. Thus, the instant petition must also be denied pursuant to 8 C.F.R. § 204.2(c)(1)(ii), where the Petitioner has remarried.

On appeal, the Petitioner asserts that the Director has discretion to disregard the requirement the Form I-360 must be filed within two years of a petitioner's divorce, because it is not a statutory "element" required for eligibility. The Petitioner does not, however, provide any legal authority for this assertion. Regardless, as noted, the petition would still be denied under 8 C.F.R. § 204.2(c)(1)(ii), because the Petitioner has now remarried after divorcing J-G-.

Accordingly, based on our *de novo* review, as the Petitioner and J-G- were divorced more than two years prior to the filing of the instant petition and the Petitioner has since remarried, he has not established the requisite qualifying relationship as the former spouse of a U.S. citizen, as required by subsection 204(a)(1)(A)(iii)(II)(aa) of the Act.

B. Eligibility for Immigrant Classification

Beyond the Director's decision, as the Petitioner has not established a qualifying spousal relationship to a U.S. citizen based on his former marriage to J-G-, he necessarily has also not demonstrated his corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on that relationship, as required under 204(a)(1)(A)(iii)(II)(cc) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the ground for denial of his petition because he has not established a qualifying spousal relationship with a U.S. citizen. Beyond the Director's decision, he has also not demonstrated his corresponding eligibility for immediate relative classification based on that relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128

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(BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-M-A-H-*, ID# 14846 (AAO Dec. 4, 2015)